

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

THE SALVATION ARMY, KANSAS AND WESTERN MISSOURI DIVISION,

Appellant,

v.

BANK OF AMERICA, et al.,

Respondents.

DOCKET NUMBER WD76464

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 11, 2014

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Kathleen A. Forsyth, Judge

JUDGES

Division One: Martin, P.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

THE SALVATION ARMY, KANSAS AND)
WESTERN MISSOURI DIVISION,)

Appellant,)

v.)

BANK OF AMERICA, et al.,)

Respondents.)

**OPINION FILED:
March 11, 2014**

WD76464

Jackson County

Before Division One Judges:

Cynthia L. Martin, Presiding Judge, and Mark D. Pfeiffer
and Karen King Mitchell, Judges

Appellant Salvation Army, Kansas and Western Missouri Division (“Salvation Army”), appeals the judgment of the Circuit Court of Jackson County, Missouri, dismissing its petition to contest a will that had been admitted to probate on the grounds that the Salvation Army lacked standing to contest the will in that it was not an heir at law or a beneficiary under any competing timely presented will of the decedent. On appeal, the Salvation Army argues that the Circuit Court erred in dismissing its claim for lack of standing because the proponents of the probated will had waived any defense that the competing will, which named the Salvation Army as a beneficiary, was not timely presented. Alternatively, the Salvation Army argues that time limitation for the presentment of wills for probate should have been tolled. The Salvation Army also argues that the trial court’s judgment was in error in that the Salvation Army enjoyed the standing of the heirs at law, who, after voluntarily dismissing their claims with prejudice, assigned any remaining interest in such claims to the Salvation Army.

AFFIRMED.

Division One holds:

The proponents of the will that had been timely presented and accepted to probate did not waive their defense that the earlier executed will propounded by the Salvation Army had not been timely presented, because they did bring the issue to the trial court’s attention by motion.

The trial court, within its discretion, treated the motion as one to amend the parties' answer to the Salvation Army's will contest petition and allowed the amendment. The trial court, then agreeing that the competing will had not been timely presented for probate and was thus "forever barred" from consideration pursuant to RSMo section 473.050.5, properly concluded that the Salvation Army lacked standing to contest the timely presented will because it did not stand to gain or lose depending on the validity of the timely presented will. Neither was the time limit for presentment of the competing will tolled, as the presentment statute is a special statute of limitations subject only to any applicable tolling provisions contained within the statute itself, of which there were none.

Because the Salvation Army lacked standing, it was not a proper party to the intestate heirs' initial action contesting the timely presented will. Therefore, even if section 473.083.8, which requires the consent of all parties not in default, applied to the heirs' voluntary dismissal, the Salvation Army was not a party whose consent was required to make the dismissal effective. Accordingly, the dismissal with prejudice served to terminate any claim of the heirs at law to the decedent's estate, and the heirs' assignment to the Salvation Army could not confer standing.

Opinion by: Mark D. Pfeiffer, Judge

March 11, 2014

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